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to the Factors Acts, — an opposition which crops out in almost every case on the subject, and of which *Prentice Co.* v. *Page* (41 N. E. R. 279), a Massachusetts case, furnishes an example. A swindler, by false representations and forged certificates (arts which subsequently secured his conviction for larceny), managed to obtain goods from the Prentice Company, which he palmed off upon a purchaser for value without notice. This result he had accomplished by assuring the Prentice Company that he had already made contracts for the goods as their agent, and that he wished simply to complete the sales by delivery. Under these circumstances, and under a Factors Act that protected purchasers from agents "intrusted with the possession of merchandise or of a bill of lading, consigning merchandise to him for the purpose of sale," the court decided that the word "sale" did not include a completed sale, and that a man intrusted with goods for the purpose of fulfilling a contract of sale was not a man intrusted "for the purpose of sale."

In England in *Baines* v. *Swainson* (4 B. & S. 27) and *Shepard* v. *Bank* (7 H. & N. 661), the opposite result was reached. The court attempts to distinguish these cases by pointing out that in the English Factors Acts the provision is simply that the goods shall be "intrusted," and not, the court says, "as ours, 'intrusted for sale.'" It is noticeable, however, that in the Massachusetts act the phrase "for the purpose of sale" occurs only in connection with the bill of lading, and not with the merchandise. The court then tries to discredit *Baines* v. *Swainson* by quoting Blackburn, J., in *Cole* v. *Bank* (L. R. 10 C. P. 354, 373, 374), to the effect that Willes, J. in delivering judgment in *Fuentes* v. *Montis* (L. R. 3 C. P. 268), "speaks of *Baines* v. *Swainson* as going to the extreme of the law." Yet on page 280 of L. R. 3 C. P. Willes, J. says, "The case of *Baines* v. *Swainson*, to which I entirely assent."

Another ground on which the court rests its decision is the larceny by the agent. "It would be a contradiction in terms to say that goods are intrusted for sale to one who steals them." That, however, is by no means perfectly clear. Larceny by trick is not at all inconsistent with persuading the owner to intrust goods to a rascal. The crime or fraud may render the guilty party punishable; but as Martin, B. said, in answer to a similar position taken in *Shepard* v. *Bank* (7 H. & N. 661, at 665), "he does not, however, the less intrust." Looked at from the point of view of this anomalous species of larceny, this *ratio decidendi* also seems hardly satisfactory.

ADMISSION TO THE BAR. — The General Council of the Quebec Bar is considering the advisability of admitting to practice, without examination, all who present diplomas from any law school in the Province. This suggests the query as to whether such a scheme is likely ever to secure general adoption. Perhaps it may not be universally known that in several of our States it already prevails. In Louisiana, Mississippi, West Virginia, and Wisconsin, the diploma of the law department of the State University is acceped in lieu of examination; in Georgia, two law schools are thus recognized; while in Illinois and Tennessee diplomas from any law school in the State, and in Indiana from any law school whatever, entitle their holders to admission to the bar. There is doubtless much to be said both for and against this policy. One who recalls the weeks of laborious memorizing, terminating in the severe mental strain of many consecutive hours of thinking and writing

at lightning speed in a badly ventilated room, is likely to regard a bar examination as an unfair test. Where there is but one law school in question, there certainly seems to be no serious objection to accepting its degree as evidence of the student's knowledge of common law, at least, if not of the statutes and practice. Where, on the other hand, the privilege is bestowed on two or more law schools, objections may arise from the inequality of standard, the strivings of the several faculties to enlarge their roll of students, and the ineffectiveness of the distant supervision exercised by the Bar. However, even under these circumstances, the question is worth discussing.

JUDICIAL CHECK ON UNCONSTITUTIONAL LEGISLATION. — The exercise by the courts of this country of the power to declare acts of a co-ordinate legislature void because of unconstitutionality has become so much of a commonplace, that the peculiar circumstances which led to the establishment of the power are likely to be forgotten : and one is apt to think of this power of the judiciary as inherent in the nature of our government, and as such, accepted from the outset without dispute. The able and serious opposition which met the claim of this power in some of the original States is too frequently overlooked. As late as 1825, Gibson, J., of the Pennsylvania Supreme Bench, in *Eakin* v. *Raub* (12 S. & R. 330), vigorously denied the existence of the right claimed by the courts to disregard a legislative act because of its conflict with provisions of the State Constitution. A re-examination of the source of this power is demanded, when one finds it laid down as a principle established beyond dispute, that under a written Constitution the right of the judiciary to declare legislative enactments void for unconstitutionality is " the necessary logic of jurisprudence. "

This is, in effect, the statement made by Prof. J. W. Burrage in a recent number of the Political Science Quarterly (September, 1895, Vol. X. pp. 422, 423).

That under the State and Federal Constitutions the American courts exercise this power rightfully, is settled beyond cavil. Yet it is not expressly granted in the Constitutions of the original States : nor is it clear, as Prof. Burrage would seem to assert, that it is expressly granted in the Federal Constitution. Nevertheless, one is not driven to defend the power as the "necessary logic of jurisprudence." Its existence is to be traced rather to the relations of the English courts to our colonial legislatures prior to the Revolution, to the effect of those relations on the conception of the powers of State judiciaries, and less remotely to the intentions of the framers of our early constitutions, than to a logical deduction from the mere existence of a written constitution. (See Thayer's Origin and Scope of the American Doctrine of Constitutional Law, 7 HARVARD LAW REVIEW, 129.)

Gibson, J., in the case of *Eakin* v. *Raub*, above referred to, points out that the powers of the judiciary fall into two classes, political and civil. The civil powers are the ordinary powers of the courts at common law, while the power by which any control or influence is exerted over other departments of government or their acts is a political power. At common law, the judiciary can possess no political power. Yet it is claimed that, by necessary implication, the existence of a written constitution confers upon the judiciary, in addition to its ordinary and